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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/628,367	07/31/2000	Michael Casson Bailey	GB9-2000-0083-US1	4169
25259	7590	08/26/2004	EXAMINER	
IBM CORPORATION 3039 CORNWALLIS RD. DEPT. T81 / B503, PO BOX 12195 REASEARCH TRIANGLE PARK, NC 27709			SHAH, NILESH R	
			ART UNIT	PAPER NUMBER
			2127	
DATE MAILED: 08/26/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/628,367

Applicant(s)

BAILEY ET AL.

Examiner

Nilesh Shah

Art Unit

2127

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Claims 1-18 are presented for examination.

#### ***Response to Arguments***

2. In view of the appeal brief filed on 05/26/04, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,  
request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. The following claim language is indefinite:

- i. As per claims 1 and 11 (line 1) the “pool of reusable environments” is indefinite because it is not made explicitly clear in the claim language if the new environments come from the pool of reusable environments or are they created differently?
  - ii. As per claims 1 and 11 (lines 5-12) the “best” is indefinite because it is not made explicitly clear in the claim language if the best environment is determined by the user or the program running. Also is the best environment for the first or second program?
  - iii. As per claims 1 and 11 (lines 10-12) the “requirements” is indefinite because it is not made explicitly clear in the claim language if the requirements is determined by the user, application or the program. Finally, where is the requirements stored and how are they compared to determined if a match exists?
- 

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- i. A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Curtis et al (5,896,531) (hereinafter Curtis) in view of Kaczmariski (6,448,981).
7. As per claim 1, Curtis teaches the invention substantially as claimed including a method for progressively improving a fit of a pool of reusable environments to requirements of programs in a computer system, the method comprising steps of: providing a first environment for a first program (col. 9 lines 10-50) responsive to initiation of a second program, making a determination whether creation of a new environment is a best response (Fig. 5A element 454, col. 7 lines 24-31, col. 5 line 45- col. 6 line 50) responsive to a determination that creation of a new environment is a best response, creating a new environment for the second program (col. 5 line 45- col. 6 line 50) responsive to a determination that creating a new environment is not a best response, testing the pool for a best fit environment (Fig. 5A element 454, col. 7 lines 24-31, col. 5 line 45- col. 6 line 50).
8. Curtis does not specifically teach the use of adding elements for an environment. Kaczmariski teaches adding elements to the best fit environment to match requirements of the second program, unless the best fit environment already matches the requirements of the second program (col. 3 lines 24-46, col. 20 lines 25-32).

9. It would have been obvious to one skilled in the art at the time of the invention was made to combine the teachings of Kaczmariski and Curtis because Kaczmariski's method of adding element that are required for the program about improve Curtis's system by being able to update requirements as needed.
10. As per claim 2 Curtis teaches a method wherein at least one of the first, new and best fit environments is an execution environment (col. 5 line 45- col. 6 line 50)
11. As per claim 3, Curtis teaches a method wherein the execution environment is preinitialized (col. 3 line 43- col. 4 line 38)
12. As per claim 4, Curtis teaches a method wherein at least one of the first, new and best fit environments is eligible to be deleted (col. 5 line 45- col. 6 line 50, col. 7 line 20 –col. 8 line 50)
13. As per claim 5, Curtis teaches a method wherein at least one least recently used of the first, new and best fit environments is eligible to be deleted (col. 5 line 45- col. 6 line 50, Fig. 5A element 454, col. 7 lines 24-31)
14. As per claim 6 Curtis teaches a method wherein the elements are parameters of at least one of the first, the new and the best fit environments (col. 5 line 45- col. 6 line 50)

15. As per claim 7, Curtis teaches a method wherein the step of responsive to initiation of a second program, making a determination whether creation of a new environment is a best response comprises testing whether the pool has reached a maximum size (fig. 5, col. 7 lines 24-31)
16. As per claim 8, Curtis teaches a method wherein the step of responsive to a determination that the pool has reached its maximum size, testing the pool for a best fit environment comprises a programmatically alterable test (fig. 5, col. 7 line 20 –col. 8 line 50)
17. As per claim 9, Curtis teaches a computer program product, comprising computer program code tangibly embodied in a signal-bearing medium, for, when loaded into a computer system and executed, progressively improving a fit of a pool of reusable environments to requirements of programs in a computer system (col. 5 line 45- col. 6 line 50)
18. As per claim 10 Curtis teaches a computer program product wherein the signal bearing medium is at least one of a transmissive medium and a storage medium (col. 3 lines 10-65, fig. 5, col. 7 line 20 –col. 8 line 50)
19. Claims 11- 18 are rejected based on claims 1-8 respectfully.



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*Conclusion*


20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nilesh Shah whose telephone number is 703-305-8105. The examiner can normally be reached on 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, meng An can be reached on 703-305-9678. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nilesh Shah  
Examiner  
Art Unit 2127

NS  
August 9, 2004

  
MENG-AL T. AN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100